

**Perumal a/l Angamuthu v
Sowntharakowry a/p Shanmugam**

COURT OF APPEAL (KUALA LUMPUR) — CIVIL APPEAL NO B-02-218
OF 1996

SHAIK DAUD, SITI NORMA YAAKOB AND MOKHTAR SIDIN JJCA
3 SEPTEMBER 1999

Civil Procedure — Appeal — Leave to appeal — Appeal against order for arrears of rent — Matter originally involves tenancy and no was value attached to it — Whether leave necessary

The appellant had appealed against the decision of the High Court which granted the respondent vacant possession of a certain premises and arrears of rental until handing over of vacant possession. Counsel for the respondent contended that although the matter originally involves the question of tenancy and there was no value attached to it, the High Court in its judgment had made an order of arrears of rent, thereby attaching a value to the matter, and since no leave had been obtained, the appeal is incompetent.

Held, striking out the appeal with costs:

- (1) The court are unable to agree with the contention that it ought to treat this claim as if it was made under O 89 of the Rules of the High Court 1980 since the originating summons clearly mentioned that it was made under O 28 (see p 368B–C).
- (2) Since the High Court had attached a value to the matter appealed against, by making an order for arrears of rent, leave to appeal is required unless it comes within any of the exceptions in s 68(1) of the Courts of Judicature Act 1964 and Practice Direction No 2 of 1996. Since no leave had been obtained, the appeal is not competent (see p 368D–E).

[Bahasa Malaysia summary]

Perayu telah merayu terhadap keputusan Mahkamah Tinggi yang telah memberikan responden milikan kosong berkenaan dengan premis-premis tertentu dan juga tunggakan sewa sehingga pemberian milikan kosong. Peguam untuk responden menegaskan bahawa walaupun perkara tersebut pada mulanya melibatkan persoalan mengenai penyewaan dan tiada nilai dimasukkan bersama, memandangkan Mahkamah Tinggi di dalam penghakimannya telah membuat perintah tunggakan sewa dan dengan itu memasukkan nilai kepada perkara tersebut, rayuan tersebut adalah tidak kompeten.

Diputuskan, menolak rayuan dengan kos:

- (1) Mahkamah tidak dapat bersetuju dengan penegasan bahawa ia patut menganggap tuntutan ini seolah-olah ia dibuat di bawah A 89 Kaedah-Kaedah Mahkamah Tinggi 1980 kerana saman

- A pemula jelas menyatakan yang ia dibuat di bawah A 28 (lihat ms 368B–C).
- (2) Oleh kerana Mahkamah Tinggi telah memasukkan nilai kepada perkara yang dirayu itu, dengan membuat perintah untuk tunggakan-tunggakan sewa, kebenaran untuk merayu diperlukan kecuali ia terjatuh di dalam sebarang pengecualian di dalam s 68(1) Akta Mahkamah Kehakiman dan juga Arahan Amalan 1996 No 2. Oleh kerana kebenaran belum diperolehi, rayuan tersebut adalah tidak kompeten (lihat ms 368D–E).]
- B

C **Notes**

For cases on leave to appeal, see 2(1) *Mallal's Digest* (4th Ed, 1998 Reissue) paras 667–709.

Cases referred to

- D *Cheow Chew Khoon (t/a Cathay Hotel) v Abdul Johari bin Abdul Rahman* [1995] 1 MLJ 457 (refd)

Legislation referred to

- E Courts of Judicature Act 1964 s 68(1)
Practice Direction No 2 of 1996
Rules of the High Court 1980 O 28, O 89

Appeal from: Originating Summons No 24–644 of 1995 (High Court, Shah Alam)

- F *Murali Achan (K Kulasegaran with him) (K Kulasekar & Associate)* for the appellant.
Gurbachan Singh (Bachan & Kartar) for the respondent.

Shaik Daud JCA (delivering judgment of the court): The appeal is from the decision of the Shah Alam High Court which had entered judgment in favour of the respondent for vacant possession of premises No 5, Jalan Gasing, Petaling Jaya and arrears of rental at RM1,200 per month from 1 August 1991, until handing over of vacant possession. It is not in dispute that the respondent is the registered owner of the said property and had rented it out to the appellant.

- H At the outset of the appeal, Mr Gurbachan Singh, learned counsel for the respondent, informed the court that he has a preliminary objection to raise. He conceded, however, that he failed to give notice of this to learned counsel for the appellant. Since there was no objections, we allowed the preliminary objection to be raised.

- I Learned counsel for the respondent questioned the competency of the appeal as no leave to appeal had been obtained by the appellant. He contends that although this matter originally involves the question of tenancy and there was no value attached to it, the High Court in its

judgment made an order of arrears of rent, thereby attaching a value to the matter, and since no leave had been obtained, the appeal is incompetent.

Learned counsel for the appellant argued that since the respondent's claim was only for vacant possession, it must be taken that it is filed under O 89 and as such no leave to appeal is required. He further contends that the claim has no value attached to it.

We are unable to agree with the contention that we ought to treat this claim as if it was made under O 89. When an application is not clear or makes no mention under what order of the Rules of the High Court 1980 it is made, then we should look at the substance of the application as was held in *Cheow Chew Khoon (t/a Cathay Hotel) v Abdul Johari bin Abdul Rahman* [1995] 1 MLJ 457. In that case, the originating summons did not specify the order under which it was made, but in the present case, the originating summons clearly mentioned that it was made under O 28 of the Rules of High Court 1980. Therefore, we cannot treat it as if it was made under some other order.

We are of the view that since the High Court had attached a value to the matter appealed against, by making an order for arrears of rent, leave to appeal is required unless it comes within any of the exceptions in s 68(1) of the Courts of Judicature Act 1964 and Practice Direction No 2 of 1996. Since no leave had been obtained, the appeal is not competent and we ordered it to be struck off with costs.

Appeal struck off with costs.

Reported by Loo Lai Mee

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